

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0118**

State of Minnesota,
Respondent,

vs.

Jeffrey Scott Hurst,
Appellant.

**Filed January 10, 2022
Affirmed
Slieter, Judge**

Washington County District Court
File No. 82-CR-18-4030

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Pete Orput, Washington County Attorney, Nicholas A. Hydukovich, Assistant County Attorney, Stillwater, Minnesota (for respondent)

Michelle S. Margoles, Margoles & Margoles, Minneapolis, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Slieter, Judge; and
Gaïtas, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

Appellant raises two issues on direct appeal from his conviction for third-degree criminal sexual conduct, in violation of Minn. Stat. § 609.344, subd. 1(b) (2016), after engaging in sexual penetration with a 15-year-old female when appellant was 47 years old.

First, appellant argues that, as applied to these facts, Minn. Stat. § 609.344, subd. 1(b), violates substantive due process by precluding him from asserting the mistake-of-age defense. Second, appellant argues that the district court abused its discretion by denying his motion for a downward durational departure. Because there exists a rational basis for the legislature to preclude the mistake-of-age defense for those who are more than ten years older than a victim, the statute does not violate substantive due process, and because the district court considered the reasons for a downward durational departure before rejecting those reasons and imposing a guidelines sentence, we affirm.

FACTS

Appellant Jeffrey Scott Hurst was charged with one count of third-degree criminal sexual conduct, in violation of Minn. Stat. § 609.344, subd. 1(b). Because appellant was more than ten years older than S.J.S. at the time of the offense, the statute prohibited a mistake-of-age defense.

The parties agreed to a court trial based upon stipulated facts. *See* Minn. R. Crim. P. 26.01, subd. 3(f). By the time S.J.S. personally met appellant, she had engaged in sexual acts with “four men,” all of whom were eventually “convicted of criminal sexual conduct offenses,” and appellant was the “fifth man to be criminally charged for having sex with S.J.S.” S.J.S. “engaged in a pattern of deception” by “repeatedly portray[ing] herself as an adult in order to meet and pursue sexual relationships with older men.”

Before meeting appellant in person, S.J.S. “liked” appellant’s online dating profile using a fictitious profile. Appellant then found one of S.J.S.’s social media accounts and the two began communicating. Appellant believed that S.J.S. was 19 years old, as she

portrayed herself online. Approximately two weeks after appellant “liked” her dating profile, S.J.S. obtained a ride to appellant’s residence and the parties, over the next few days, engaged in sexual intercourse and oral sex. During this time period, appellant publicly appeared with S.J.S., including dates at a mall, restaurant, movie theater, and pool hall. At the pool hall, S.J.S. met some of appellant’s friends and claimed to be 19 years old but was later asked by staff to leave because she was not yet age 21.

Ultimately, S.J.S.’s father reported her as a runaway and S.J.S. was located when law enforcement arrived at appellant’s residence and identified S.J.S., though she initially denied her identity. It was at that time that appellant first discovered that S.J.S. had used a fictitious identity and that she was 15 years old.

Before trial, appellant moved for an order declaring that his preclusion from raising a mistake-of-age defense was unconstitutional. *See* Minn. Stat. § 609.344, subd. 1(b). The district court denied appellant’s motion, concluding that the supreme court in *State v. Holloway*, 916 N.W.2d 338 (Minn. 2018), “rejected the very same argument that [appellant] advances.”

Based upon the stipulated facts, the district court found appellant guilty. Appellant requested a downward durational departure to a gross misdemeanor sentence based upon the claim that his offense was “less onerous than the typical Third Degree Criminal Sexual Conduct case” because S.J.S. deceived appellant, appellant had no intention or desire to have sex with a minor, and S.J.S. demonstrated a pattern of entrapping men, at least four previous, who faced similar charges as appellant.

The district court denied appellant’s departure motion and stayed imposition of a felony sentence, stating that “[e]ither you are going to get it or you are not, and within 10 years from today’s date you will be over the age of 50, almost 60 years old, and I am hoping that by then you got everything.” This appeal follows.

DECISION

I. Minn. Stat. § 609.344, subd. 1(b) does not, as applied to these facts, violate substantive due process.

In third-degree criminal sexual conduct cases pursuant to Minn. Stat. § 609.344, subd. 1(b),¹ if a victim “is at least 13 but less than 16 years of age” and “the actor is no more than 120 months older” than the victim, then “mistake as to the [victim’s] age shall not be a defense.” Appellant argues that this law, as applied to his case, is a substantive due-process violation because S.J.S. “intentionally and purposefully” lied to him about being 19 years old, he had no reason to believe S.J.S. was underage, and S.J.S. had sexual intercourse with multiple other men who were also convicted of criminal sexual conduct. We are not persuaded.

“Minnesota statutes are presumed constitutional and [the] power to declare a statute unconstitutional must be exercised with extreme caution and only when absolutely

¹ We note that Minn. Stat. § 609.344, subd. 1(b) was amended during the 2021 regular legislative session. *See* 2021 Minn. Laws ch. 11, art. 4, § 18, at 2044 (creating new subdivision and changing the relevant ages where mistake of age is not a defense in third-degree criminal sexual conduct cases). Because the amendments were “effective September 15, 2021, and appl[y] to crimes committed on or after that date,” these amendments do not affect our analysis. *Id.* at 2046. Also, the amendments do not benefit appellant because it further limits the availability of the mistake-of-age affirmative defense to actors five years older than the victim from ten years previously.

necessary.” *Holloway*, 916 N.W.2d at 344 (quotation and alteration omitted). The federal and state constitutions provide that the government shall not deprive any person of “life, liberty, or property without due process of law.” U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7. These provisions prohibit “certain arbitrary, wrongful government actions, regardless of the fairness of the procedures used to implement them.” *Zinerman v. Burch*, 494 U.S. 113, 125 (1990) (quotation omitted).

The district court, in denying appellant’s constitutional claim, cited the supreme court’s decision in *Holloway*, which addressed the same statutory language. Appellant claims, however, that the *Holloway* decision is not controlling because that case considered a facial constitutional challenge to this statute and this case involves an as-applied challenge. Additionally, appellant in his brief argues that we must apply strict scrutiny to the statute.²

There are two types of challenges to the constitutionality of a statute: facial and as-applied. See *Rew v. Bergstrom*, 845 N.W.2d 764, 778 (Minn. 2014). “A facial challenge to the constitutionality of a statute requires a showing that no set of circumstances exists under which the [statute] would be valid.” *SooHoo v. Johnson*, 731 N.W.2d 815, 821 (Minn. 2007) (quotation omitted). In an as-applied challenge, “[w]e examine the constitutionality of the statute, limited to the ‘context of the specific circumstances’ presented in the case.” *State v. Final Exit Network, Inc.*, 889 N.W.2d 296, 304 (Minn. App. 2016) (quoting *Rew*, 845 N.W.2d at 780), *rev. denied* (Minn. Mar. 14, 2017). The

² During oral argument, appellant conceded that “we do need to apply the rational-basis test,” in light of the *Holloway* decision.

Holloway court did not identify the type of constitutional challenge it analyzed. Nevertheless, we need not resolve that issue because its conclusion that the statute must be reviewed based upon rational basis is binding on our court and applying an as-applied analysis does not result in a constitutional infirmity.

Rational-basis test

If a statute implicates a fundamental right, we apply strict-scrutiny review and “will only find a statute constitutional if it advances a compelling state interest and is narrowly tailored to further that interest.” *Holloway*, 916 N.W.2d at 344 (quotation and alteration omitted). However, “[i]f a statute does not implicate a fundamental right, rational-basis review applies, which requires only that the statute not be arbitrary or capricious; in other words, the statute must provide a reasonable means to a permissible objective.” *Id.* at 344-45 (quotation omitted).

In concluding that the correct constitutional review of Minn. Stat. § 609.344, subd. 1(b) is rational basis, the supreme court in *Holloway* observed that “Minnesota historically has *not* permitted a mistake-of-age defense. What has been known as statutory rape—sexual conduct with a person not of the age of consent—has been a crime in Minnesota since it was first organized as a territory.” *Id.* at 345. After analyzing Minn. Stat. § 609.344, subd. 1(b), the supreme court concluded that “[i]t cannot be said that Minnesota has a historical practice of recognizing a mistake-of-age defense in statutory rape cases,” and therefore, there is no fundamental right to a mistake-of-age defense. *Id.* at 345-46.

We are bound by the supreme court’s precedent, and we thus review appellant’s constitutional challenge to Minn. Stat. § 609.344, subd. 1(b), for a rational basis. *See Final Exit Network*, 889 N.W.2d at 303 (relying on Minnesota Supreme Court precedent that a challenged statute survives a strict scrutiny facial challenge); *State v. Rohan*, 834 N.W.2d 223, 227 (Minn. App. 2013) (“[W]hen the supreme court has already construed a statute, this court is bound by that interpretation.”), *rev. denied* (Minn. Oct. 15, 2013).

As-applied challenge

“An as-applied challenge uses the same substantive [constitutional] standards as a facial challenge but involves a judgment as to the constitutionality of a statute based on the harm to the litigating party.” *Final Exit Network*, 889 N.W.2d at 303-04 (quotation and citation omitted). Appellant argues that, applying the rational-basis test, Minn. Stat. § 609.344, subd. 1(b), is unconstitutional because the “rational basis” for the statute discussed in *Holloway*—“the prevention of sexual exploitation and abuse of children”—does not apply to the facts of this case. *Id.* at 346 (quoting *New York v. Ferber*, 458 U.S. 747, 757(1982)). Here, according to appellant, allowing him to assert a mistake-of-age defense “would not enable teens to be exploited; it will simply prevent teens from exploiting adults, as S.J.S. did in this case.” Appellant misapprehends the scope of a rational-basis review in this as-applied challenge.

Rational-basis review “requires only that the statute not be arbitrary or capricious; in other words, the statute must provide a reasonable means to a permissible objective.” *Boutin v. LaFleur*, 591 N.W.2d 711, 716 (Minn. 1999). Protecting children from sexual abuse and exploitation is a legitimate legislative objective. *State v. Muccio*, 890 N.W.2d

914, 928 (Minn. 2017). The United States Supreme Court, and many other courts, recognize a legitimate government interest in protecting children from criminal sexual activity. *Holloway*, 916 N.W.2d at 346. The *Holloway* court concluded:

Plainly, it is not irrational for the Legislature to provide a mistake-of-age defense for only some, but not all, adults. Indeed, one of the purposes of the criminal-sexual-conduct statutes is to protect children from being subjected to sexual penetration or sexual contact with adults, a permissible objective. A reasonable way to deter or sanction such conduct—and thereby protect children—is to preclude a mistake-of-age defense for certain adults.

Id. at 346-47. Thus, even when applied to these facts, it is reasonable for the legislature to deter or sanction the prohibited conduct, thereby protecting children, by precluding a mistake-of-age defense for appellant and placing the responsibility on appellant to ascertain S.J.S.’s age. *Id.*; see also *State v. Moser*, 884 N.W.2d 890, 899 (Minn. App. 2016) (“A defendant can reasonably be required to ascertain the age of a person the defendant meets in person.”). Therefore, because precluding the mistake-of-age defense for certain adults is neither arbitrary nor capricious and is a reasonable means to achieve a permissible objective, Minn. Stat. § 609.344, subd. 1(b), does not violate appellant’s substantive due-process right as applied to him. *Holloway*, 916 N.W.2d at 347.

II. The district court properly exercised its discretion to deny appellant’s motion for a downward durational departure.

District courts have great discretion when imposing sentences, and we reverse sentencing decisions only when the district court abuses its discretion. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014). A district court abuses its discretion when its decision is premised on legal errors or clearly erroneous findings of fact. *State v. Solberg*, 882

N.W.2d 618, 623 (Minn. 2016). The Minnesota Sentencing Guidelines establish presumptive sentences for felony offenses. Minn. Stat. § 244.09, subd. 5 (2020). A sentence prescribed by the sentencing guidelines is presumed appropriate. *Soto*, 855 N.W.2d at 308. A district court may depart from the presumptive sentence only when “there exist identifiable, substantial, and compelling circumstances to support a departure.” Minn. Sent. Guidelines 2.D.1 (2016). “[D]epartures from the guidelines are discouraged and are intended to apply to a small number of cases.” *Solberg*, 882 N.W.2d at 623. We will reverse the district court’s refusal to depart from the presumptive sentence only in a “rare” case. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

Appellant moved for a downward durational departure by asking that the district court impose a gross misdemeanor sentence. When the district court imposes a sentence for a felony offense with a duration that is within misdemeanor or gross-misdemeanor limits, Minn. Stat. § 609.13, subd. 1(1) (2020), it is a departure that must be supported by substantial and compelling factors. *See State v. Bauerly*, 520 N.W.2d 760, 762-63 (Minn. App. 1994) (affirming departure from felony conviction to gross misdemeanor sentence based on mitigating factors), *rev. denied* (Minn. Oct. 27, 1994).

The district court is not required to provide reasons for denying a departure. *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985) (“Although the [district] court is required to give reasons for departure, an explanation is not required when the court considers reasons for departure but elects to impose the presumptive sentence.”). Even if there are grounds to support a departure, the district court is not required to depart. *State v. Olson*, 459 N.W.2d 711, 716 (Minn. App. 1990), *rev. denied* (Minn. Oct. 25, 1990). The

district court must simply demonstrate that it exercised its discretion by considering the reasons for and against departure. *Van Ruler*, 378 N.W.2d at 81.

The record demonstrates that the district court did not abuse its discretion when it denied appellant's motion for a downward durational departure to a gross misdemeanor sentence and stayed the imposition of a felony sentence.³ The district court acknowledged hearing "all the arguments," and found that the case "is about as typical as you get in a statutory rape case" except the "vast . . . age difference" between S.J.S. and appellant. And the fact that "multiple men [were] involved with a child who [had] chronic issues . . . [was] not enough . . . to justify a durational departure in a case such as this." The district court concluded that "as far as a departure is concerned . . . [t]here just isn't a legal basis."

Therefore, the district court properly exercised its discretion by denying appellant's motion for a downward durational departure and staying the imposition of his sentence.

Affirmed.

³ "A 'stay of imposition' occurs when the court accepts and records a finding or plea of guilty, but does not impose (or pronounce) a prison sentence. If the offender successfully completes the stay, the case is discharged, and the conviction is deemed a misdemeanor under Minnesota Statutes, section 609.13" Minn. Sent. Guidelines 1.B.19.a (2016). Nevertheless, the offender is still assigned a felony conviction for purposes of calculating criminal history score. *Id.*